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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 **Terrence Harris**, an individual,  
12 Plaintiff,  
13 v.  
14 **Credit One Bank, N.A.**,  
15 Defendant.

Case No. '16CV0908 BEN JLB

**Complaint for Damages**

Jury Trial Demanded

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17  
18 1. Terrence Harris ("Plaintiff"), brings this action for damages,  
19 injunctive relief, and any other available legal or equitable remedies, resulting  
20 from the unlawful and abusive attempts by Credit One Bank, N.A.  
21 ("Defendant"), and its agents to collect a debt, causing Plaintiff damages.

22 2. For purposes of this Complaint, unless otherwise indicated,  
23 "Defendant" includes all agents, employees, officers, members, directors, heirs,  
24 successors, assigns, principals, trustees, sureties, subrogees, representatives and  
25 insurers of Defendant named in this caption.

26 **Jurisdiction and Venue**

27 3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47  
28 U.S.C. § 227, and under 28 U.S.C § 1367 for pendant state law claims.



1 known to Plaintiff is set forth as Exhibit “A” to this Complaint and is  
2 incorporated herein by reference.

3 13. These calls were harassing, repetitive, and deliberately calculated to  
4 intrude on Plaintiff’s privacy. Examples of the abusive pattern and practice of  
5 calling are:

6 14. In August 10 through August 31, 2015, Defendant called Plaintiff’s  
7 cellular telephone number ending 5614 not less than 150 times, or an average of  
8 7.14 times per day.

9 15. In September 2015, Defendant called Plaintiff’s cellular telephone  
10 number ending 5614 not less than 260 times, and called every day except  
11 September 7.

12 16. In October 2015, Defendant called Plaintiff’s cellular telephone  
13 number ending 5614 not less than 266 times, or an average of 8.58 times per day.  
14 Defendant called every day without exception during this period.

15 17. In November 2015, Defendant called Plaintiff’s cellular telephone  
16 number ending 5614 not less than 254 times and called every day except  
17 November 26, 2015.

18 18. In total, Plaintiff received at least 1040 calls from Defendant on his  
19 cellular telephone number ending 5614 through November 30, 2015. The calls  
20 continue to the present day and Plaintiff seeks discovery to determine the exact  
21 number and timing.

22 19. None of the calls were made with Plaintiff’s express consent.

23 20. Each of the calls were made by Defendant or a third party acting on  
24 its behalf and under its control using telephone equipment that meets the  
25 definition of an “automatic telephone dialing system” under the TCPA.

26 21. Plaintiff answered several of the above mentioned autodialed  
27 telephone calls from Defendant and asked Defendant to stop calling. Despite this  
28 clear and unmistakable request, the calls continue without interruption. Each of

1 these requests terminated any express or implied consent that Defendant may  
2 have had prior to beginning its campaign of harassment by telephone.

3 22. Plaintiff also began to ignore or send to voice mail many incoming  
4 calls from numbers he did not recognize, out of frustration in dealing with  
5 Defendant's unwanted and intrusive calls. In doing so, he missed many  
6 important communications from friends and family.

7 23. Plaintiff's cellular telephone number ending in 5614 was assigned to  
8 a cellular telephone service for which Plaintiff incurred a charge for incoming  
9 calls and texts pursuant to 47 U.S.C. § 227(b)(1).

10 24. These telephone communications constituted communications that  
11 were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

12 25. Plaintiff did not provide prior express consent to receive calls or  
13 messages placed utilizing an ATDS, as required by 47 U.S.C. § 227 (b)(1)(A).

14 26. These telephone communications by Defendant, or its agent, violated  
15 47 U.S.C. § 227(b)(1).

16 27. Additionally, Defendant used an artificial and/or pre-recorded voice  
17 to make calls to Plaintiff's cellular telephone, which is a separate and  
18 independent violation of the TCPA and makes Defendant liable for additional  
19 statutory damages.

20 28. Plaintiff felt frustrated and helpless as a result of the calls. The  
21 unrelenting, repetitious calls disrupted Plaintiff's daily activities and peaceful  
22 enjoyment of his personal and professional life.

23 29. The calls placed by Defendant to Plaintiff were extremely intrusive  
24 into Plaintiff's personal life, including his relationships with close family  
25 members.

26 ///

**First Claim for Relief**

**Telephone Consumer Protection Act — 47 U.S.C. § 227(b)(1)**

30. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

31. Within a four-year period immediately preceding this action, Defendant made more than 1,000 calls to Plaintiff's cellular telephone service using an automatic telephone dialing system and/or an artificial or prerecorded voice in violation of the TCPA.

32. As a direct and intended result of the above violations of the TCPA, Defendant caused Plaintiff to sustain damages.

33. Defendant did not have prior express consent from Plaintiff to use an ATDS or to employ an artificial or prerecorded voice to call the Plaintiff's cellular telephone.

34. Under 47 U.S.C. § 227(b)(3)(B), Plaintiff is entitled to statutory damages under the TCPA of not less than \$500.00 for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B).

35. Defendant willfully and knowingly violated the TCPA, and as such Plaintiff is entitled to as much as \$1,500.00 for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(C).

36. Plaintiff is entitled to injunctive relief prohibiting such conduct in the future.

**Second Claim for Relief**

**NDTPA — Nev.Rev.Stat. § 41.600**

37. Plaintiff re-alleges and incorporates by reference the above paragraphs as though set forth fully herein.

38. Nevada law provides that, "A person engages in a 'deceptive trade practice' when in the course of his or her business or occupation he or she

1 knowingly . . . [v]iolates a state or federal statute or regulation relating to the sale  
2 or lease of goods or services.” Nev. Rev. Stat. § 598.0923(3).

3 39. The TCPA is a federal statute relating to the sale or lease of goods or  
4 services. As alleged herein, Defendant’s violations of the TCPA were made in the  
5 course of its business or occupation.

6 40. Pursuant to the Nevada Deceptive Trade Practices Act, Nev. Rev.  
7 Stat. § 41.600, violations of Nev. Rev. Stat. § 598.0923 constitute “consumer  
8 fraud.” Nev. Rev. Stat, § 41.600(2)(e).

9 41. As set forth above, by negligently, knowingly and willfully placing  
10 the automated calls and calls employing automated or prerecorded voice messages  
11 described herein, resulting in Credit One contacting cellular telephones  
12 belonging to Plaintiff without his prior express written consent, Credit One  
13 violated the TCPA.

14 42. Each such violation is a separate and distinct violation of the  
15 Nevada Deceptive Trade Practices Act. See, e.g., *Bates v. Dollar Loan Center, LLC*,  
16 No. 2:13-cv-1731 (D.Nev.) (July 15, 2014) (violation of the TCPA is a violation of  
17 NDTPA).

18 43. As a result, Plaintiff is entitled to and seeks damages in an amount  
19 to be proven at trial, equitable relief, and costs of suit together with attorneys’  
20 fees.

### 21 **Third Claim for Relief**

#### 22 **Negligence**

23 44. Plaintiff re-alleges and incorporates by reference the above  
24 paragraphs as through set forth fully herein.

25 45. Plaintiff believes and thereon alleges that Defendant owed various  
26 duties to Plaintiff pursuant to the statutes described herein. Specifically,  
27 Defendant owed a duty to Plaintiff with regard to the manner of debt collection  
28 practices.

1           46. Defendant breached Defendant's respective duties by engaging in the  
2 acts described herein each in violation of the statutes alleged herein.

3           47. Plaintiff asserts that Defendant is both the actual and legal cause of  
4 Plaintiff's injuries.

5           48. Plaintiff believes and thereon alleges that as a proximate result of  
6 Defendant's negligence, Plaintiff has suffered significant emotional distress.

7           49. Due to the egregious violations alleged herein, Plaintiff asserts that  
8 Defendant breached Defendant's respective duties in an oppressive, malicious,  
9 despicable, gross and wantonly negligent manner. As such, said conduct  
10 Defendant's conscious disregard for Plaintiff's rights entitles Plaintiff to recover  
11 punitive damages from Defendant.

12                           **Fourth Claim for Relief**

13                                   **Invasion of Privacy**

14           50. Plaintiff re-alleges and incorporates by reference the above  
15 paragraphs as through set forth fully herein.

16           51. Plaintiff had an objectively reasonable expectation of privacy at  
17 home, at work, and when conducting his daily affairs, to expect that he would  
18 not be subject to a dozen or more phone calls every day for months at a time.  
19 Defendant's unrelenting campaign of harassment by placing more than two  
20 thousand repeated phone calls intruded into this reasonable expectation of  
21 privacy.

22           52. The frequency and cumulative volume of Defendant's phone calls  
23 were received in a manner that would be highly offensive to a reasonable person  
24 in the same or similar circumstances.

25                           **Jury Trial Demand**

26           53. Plaintiff demands a jury trial on each of the causes of action set  
27 forth above, including the amount of statutory damages.

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**Prayers for Relief**

Wherefore, Plaintiff respectfully prays that judgment be entered against Defendant for the following:

1. An injunction against the calling of Plaintiff's cellular telephone by Defendant and its contractors, agents and employees;
2. Damages pursuant to 47 U.S.C. § 227(b)(3);
3. Damages pursuant to Cal. Civ. Code §§ 1788.17 and 1788.30;
4. General, special, and punitive damages according to proof;
5. Costs of litigation and reasonable attorneys' fees;
6. Such other and further relief as the Court may deem just and proper

Dated: April 15, 2016

Ankorn Law Firm, PC

*/s/ Mark Ankorn*

Attorneys for Plaintiff